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9 CLASSIFICATION STANDARDS REGULATION

10 CONSULTATION MEETINGS

11 WITH THE SISSETON-WAHPETON OYATE

12 taken on July 18, 2006

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22 Reported by Sherry G. Auge, RPR
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1 The Consultation Meeting with the
2 SISSETON-WAHPETON OYATE, was taken before Sherry G.
3 Auge, a notary public in and for the County of
4 Washington, State of Minnesota, on July 18, 2006,
5 taken at the Sheraton Hotel, Lounge No. 3, 7800
6 Normandale Boulevard, Bloomington, Minnesota,
7 commencing at approximately 2:02 p.m.

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9 A P P E A R A N C E S:

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11 ON BEHALF OF THE NATIONAL INDIAN GAMING
12 COMMISSION:

13 PHILIP N. HOGAN, Chairman of the National
14 Indian Gaming Commission, 1441 L Street NW, Suite
15 9100, Washington, D.C. 20005;

16 CLOYCE V. CHONEY, Chairman of the National
17 Indian Gaming Commission, 1441 L Street NW, Suite
18 9100, Washington, D.C. 20005;

19 JOSEPH M. VALANDRA, Chief of Staff of the
20 National Indian Gaming Commission, 1441 L Street
21 NW, Suite 9100, Washington, D.C. 20005;

22 NATALIE HEMLOCK, Special Assistant to the
23 National Indian Gaming Commission, 1441 L Street
24 NW, Suite 9100, Washington, D.C. 20005;
25 PENNY COLEMAN, Acting General Counsel for the

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1 National Indian Gaming Commission, 1441 L Street
2 NW, Suite 9100, Washington, D.C. 20005;

3 MICHAEL GROSS, Senior Attorney for the National
4 Indian Gaming Commission, 1441 L Street NW, Suite
5 9100, Washington, D.C. 20005;

6 JOHN R. HAY, Staff Attorney for the National
7 Indian Gaming Commission, 1441 L Street NW, Suite
8 9100, Washington, D.C. 20005;

9 JOHN PETERSON, Regional Director for the
10 National Indian Gaming Commission, St. Paul Office,
11 190 East 5th Street, Suite 170, St. Paul, Minnesota
12 55101;

13 ALLEN PHILLIPS, Field Investigator, 801 I
14 Street, Sacramento, California 95814.

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16 ON BEHALF OF THE SISSETON-WAHPETON OYATE:

17 SCOTT GERMAN, Tribal Vice, Lake Traverse
18 Reservation;

19 NICK CRAWFORD, Tribal Council for the Old
20 Agency District;

21 RON DUMARCE, Tribal Council;

- 22 TRAVIS CARRICO, DNGE, CEO
- 23 VERYLYN BEARDREAU, Sisseton-Wahpeton Oyate
- 24 Gaming Commission Chairman;
- 25 DANNY WHITE, Sisseton-Wahpeton Oyate Gaming

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1 Commission Executive Director;

2 JON RUNDELL, Dakot Sioux Casino General

3 Manager;

4 EDWIN CRAWFORD, Dakota Sioux Casino.

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1 WHEREUPON, the following proceedings were duly
2 had:

3 COMMISSIONER HOGAN: We'll go on the
4 record here, and let me say, again, welcome to the
5 government-to-government consultation between
6 Sisseton-Wahpeton and the National Indian Gaming
7 Commission. I'm Phil Hogan, the Chairman of the
8 National Indian Gaming Commission. Commissioner
9 Chuck Choney is with me, and today we are a
10 two-member commission.

11 We have NIGC staff with us here who have helped
12 us develop the proposed regulations and will help
13 us evaluate what tribes advise us during these
14 consultations and help us, hopefully, get to the
15 right place if and when we finalize the
16 regulations.

17 Joe Valandra is our Chief of Staff seated next
18 to Chuck. Natalie Hemlock is an assistant to the
19 Commission from our Washington office. Penny
20 Coleman, seated next to the reporter here, is our
21 Acting General Counsel. From her office are

22 attorneys Michael Gross and John Hay. John
23 Peterson, who many of you, I expect, know, is our
24 Regional Director from the office here in St. Paul,
25 and Allen Phillips is from our Sacramento office

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1 and has some expertise regarding the gaming
2 equipment that we draw on as we move, hopefully, in
3 the right direction with respect to these
4 regulations.

5 So having said that, perhaps you can each
6 introduce yourselves and tell us where you fit into
7 the tribal government, tribal gaming scheme of
8 things at Sisseton, and then, we'd like to hear
9 your comments with respect to our proposed
10 regulations.

11 MR. GERMAN: Mr. Chairman, thank you for
12 taking the time to see us on a beautiful summer
13 day. I'm going to introduce myself, and kick it
14 over to my councilman at the end of the table, and
15 we'll introduce ourselves that way. I'm Scott
16 German, the Tribal Vice Chairman at
17 Sisseton-Wahpeton, and we'll go to our Council
18 people.

19 MR. CRAWFORD: My name is Edwin Crawford.
20 I'm a Council Rep for the Old Agency District as we
21 have seven districts in our tribe, and I represent

22 the Old Agency District.

23 MR. RON DUMARCE: Good afternoon. Ron

24 Dumarce, assistant at Wahpeton here. I represent

25 one of our districts, Lake Traverse District. It's

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1 an exciting district. Keeps everybody on their
2 toes in more than one way (laughter).

3 COMMISSIONER HOGAN: I'll bet.

4 MR. JON RUNDELL: Hello, I'm John Rundell.
5 I'm the General Manager at the Dakota Sioux Casino
6 located next to Watertown, South Dakota.

7 MR. TRAVIS CARRICO: Good afternoon. My
8 name is Travis Carrico. I'm the CEO for the Dakota
9 Nation Gaming. I oversee the three gaming
10 operations for the Sisseton-Wahpeton Oyate.

11 MR. VERLYN BEARDREAU: Good afternoon
12 everybody. My name is Verlyn Beardreau. I'm
13 Chairman of the Sisseton-Wahpeton Oyate Gaming
14 Commission.

15 MR. DANNY WHITE: Good afternoon. Danny
16 White, Executive Director of the Gaming Commission.

17 MR. GERMAN: Mr. Chairman, if I may, we
18 reserve the right to submit written comments, and
19 we exercise that right by the due date of the 23rd
20 of August if we may?

21 COMMISSIONER HOGAN: Certainly. We'll

22 look forward to receiving anything you might want

23 to send us.

24 MR. GERMAN: I guess, just so want to keep

25 this as brief as we can, in advance of the

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1 submission of written comments, I had an
2 opportunity to speak at a House government
3 subcommittee of the State Legislature in the State
4 of South Dakota last February in regard to Senate
5 Bill 210, which was proposing to interject the
6 State Legislature into the comebacking process in
7 the state.

8 I opened that comment period the same as I'll
9 open this one by saying: I'm a Ronald Reagan
10 Republican. I was -- he was the first president
11 that I actually remember. I remember -- I remember
12 Jimmy Carter being sworn in, because my second
13 grade classmate of mine -- I was in third grade.
14 She was in second grade -- her mother was the
15 assistant to the tribal chairman at the time, and
16 they were actually in the audience at the
17 inauguration. I don't know if they were invited or
18 the chairman just made the decision to go out.

19 But I don't remember much of Jimmy Carter,
20 though, he was the first memory that I have of "a
21 president", but my actual first impressions of

22 leadership and government and good government was
23 Ronald Reagan. He was the president when I
24 enlisted in the Army, and it was, I think, for all
25 of us Ronald Reagan Republicans, a great tragedy,

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1 two years ago, when he died.

2 But I said to that State subcommittee, and I
3 say to the National Indian Gaming Commission and to
4 the Congress, as a Ronald Reagan Republican, I
5 believe in less government, less regulation. And
6 it appears that to us, collectively, that this
7 flies in the face of that tenant of the Republican
8 party, and it flies in the face of those tenants
9 and pronouncements of Ronald Reagan, because it
10 proposes to do just the opposite of that: Less
11 government and less regulation by adding more
12 government and more regulation.

13 Yet, again, it flies in the face of Republican
14 tenants by taking decision making at the local
15 level, which is our Tribal Gaming Commission, and
16 proposing to nationalize that regulation. And, I
17 guess, I don't -- I have seen, as have we all, in
18 Indian country, we've seen, time and again,
19 successes being made with the cards that we're
20 dealt with doing the things that the federal
21 government has told us to do.

22 In the mid to late 1800s, the pronouncements
23 were, give up the hunt and take up the plow. Well,
24 in our part of the world, we did that successfully.
25 Well, we started to get a little too big for our

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1 britches, maybe, and well-intended souls all over
2 the East Coast said, something needs to be done.
3 Indians don't have title to their land. The
4 individuals can't make his opportunities as much as
5 he can if you were only to have title of his land.
6 That was actually only the frontis piece to what
7 was actually going on.

8 That good intention was called the Dawes Act.
9 That's what it resulted in. And what happened as a
10 result of the Dawes Act? You see the reservation
11 at Sisseton-Wahpeton as depicted in the frontis of
12 your book. 1.1 million acres, as it was laid out
13 in 1867, reserved for the Sisseton and Wahpeton
14 people's, reduced to 110,000. Actually, it was
15 reduced to 80. Since the '70s, the tribe has
16 purchased about 30,000 acres.

17 We've got one tenth of what we had in 1867
18 thanks to well-intended people who said the Indian
19 needs to have title. Well, the Indian people had
20 no concept to what titlement meant, but speculators
21 sure did, and we lost 90 percent of our

22 reservation.

23 Indian gaming was in its infancy. It was what

24 it was in 1988, when Congress passed the Indian

25 Gaming Regulatory Act. Well, you know, it may have

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1 been envisioned as this little box, but Indian
2 country, and Indians being who they are, and doing
3 what they do, making the most of those
4 opportunities, blew it up into this thing that we
5 now know to be a \$23 billion industry.

6 And what do we see Congress, what do we see
7 well-intended people trying to do? Put us back
8 into that small box. We didn't expect that you
9 were gonna be a 20 billion dollar industry. We
10 thought you were gonna be a few odd jobs here and
11 there. We thought you were going to address
12 unemployment on your reservation. Well, by God, we
13 did that, and we've done it.

14 But what do we see Congress doing? What do we
15 see the National Indian Gaming Commission propose
16 to do? Put us back in our place. Pull the rug out
17 from under our feet, and by golly, I guess, it's
18 true when they say there's nothing new under the
19 sun, I think the good book says, and by golly, here
20 we are again.

21 I thought the days of paternalism and

22 parochialism were past. I thought as we had
23 Indians advance into senior positions within the
24 government, I thought that we were gonna have more
25 enlightened policy. I thought we were gonna have

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1 more tribal friendly policies. But I see big
2 government, I see big brother, attempting to put us
3 back in our place, and by God, it's not right. It
4 doesn't feel right. It doesn't smell right, and it
5 doesn't taste right.

6 COMMISSIONER HOGAN: Thank you. Do you
7 have further comments you'd like to share with us?

8 MR. RON DUMARCE: I just wanted to add a
9 few comments about what the Vice Chairman German is
10 saying here, because I've been in tribal politics,
11 in and out, since 1988, you know, when gaming first
12 came aboard on Sisseton-Wahpeton mainly. Some of
13 things we always talked about back then, I think,
14 former Chairman Hawkins here, we always had the big
15 battle of unemployment on the reservation of
16 85 percent. You know, our health care was real
17 bad.

18 Over the years since we got into gaming, all of
19 these issues, we've overcome dealing with, putting
20 more people back to work, dealing with health care,
21 especially with, you know, the high birthrate (sic)

22 of infancies. Those have, you know, improved a

23 lot.

24 You know, one of the things I remember back --

25 and we've been talking about Class II gaming right

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1 now -- is that when we couldn't negotiate a compact
2 with the State of South Dakota, we were just stuck
3 at 250 slot machines looking at different
4 alternatives. What else can we do to expand our
5 tribe, because our tribe right now is almost 12,000
6 members. Of course, we have to go out and provide
7 more jobs for people here, to enable to work and
8 provide for families.

9 One of the things here, since we weren't going
10 anyplace with the compact, that we are at a dead
11 end, one of the things I remember here that the
12 Chief of Staff of Governor Rounds here, saying,
13 well, you look like you'll have to look at Class II
14 gaming, to expand into Class II. That's one of our
15 choices here that we wanted to do. Here it enabled
16 our tribe to stand on our own two feet and
17 progress.

18 And I got to brag about Sisseton-Wahpeton. We
19 do progress. I think, the advantages in the State
20 of South Dakota. I hear it from Senator Johnson.
21 I hear it from Representative Stephanie Herseth. I

22 hear it from John Thune, Senator, how much
23 Sisseton-Wahpeton is ahead of other tribes in the
24 state of South Dakota.
25 It all boils down to gaming revenue, and then,

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1 gaming revenue expands into economic development,
2 and this is where we have gotten our feet wet. And
3 I think our tribe is doing well. I think we need
4 to continue expanding gaming in Indian tribes, and
5 I'm speaking for Sisseton-Wahpeton right now,
6 because here, I think, as a forerunner, you want to
7 keep that pace.

8 I just want to thank you, you know, Mr. Hogan,
9 for hearing us out and hearing what we believe
10 strongly in doing, I think here, with Mr. Rundell
11 and Travis and Mr. Verlyn Beardreau, and our staff
12 in the gaming, I think here that we can accomplish
13 a lot of those things. I have a lot of faith in
14 them.

15 That's why here at -- going so far and
16 stopping, to us, this is -- we're defeating our
17 purposes. We want to progress. I think, you're
18 the biggest part of that in our tribe, not only for
19 Sisseton-Wahpeton, but Indian tribes all over the
20 country is depending on gaming revenue, because
21 now, here, things are coming down, federal budget

22 cuts. I imagine, it's gonna take effect, again,
23 October 1st, right now here, so we want to be
24 prepared, I think, to stand on our own two feet.
25 Anyway, I thank you for hearing me out.

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1 COMMISSIONER HOGAN: Thank you, sir.

2 MR. CRAWFORD: I got kind of a little bit
3 off to say what Councilman Dumarce was saying as
4 well as the Vice Chair German. You know,
5 basically, we've been successful for the limited
6 machines that we have as far as Class III, 250, but
7 you look at the other two video lodges in Deadwood,
8 they seem to increase.

9 But with our 250 in the State of South Dakota
10 that we're limited to, we're able to provide jobs,
11 not only for our tribal members, but right now we
12 would like to keep at 70/30. It would be nice if
13 we had it at 100 percent, but, obviously, we can't
14 meet that goal yet, so we were at 70/30, but now
15 it's more like 50/50. So were not only providing
16 jobs for our tribal members. But for the nontribal
17 members, that these farmers that can't provide
18 health insurance, health benefits, but we had those
19 packages that we offered through our Indian gaming
20 for them, and they benefitted off of that.

21 So now putting, you know, Class II, if we can't

22 get any more machines, we're leading toward Class
23 II like Councilman Dumarce said, the governor wants
24 to lean more towards Class II. Well, then, that's
25 fine, if we can use that, but if we start putting

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1 regulations on it, then, how's that's gonna affect
2 us again? How's that gonna affect the community,
3 economically-wise?

4 I mean, does the federal government regulate
5 the State's gamings operation? Or does the State
6 do it themselves? But why it is the tribe, when
7 the tribe wants to do things, we got to be
8 regulated, not only by the tribal government, by
9 our government -- which I think we're doing a good
10 job as far as meeting the criterias for on the
11 Federal side as well as the State -- but now Class
12 II. We're basically, as a tribe, or the tribes to
13 regulate that. Why would they want to change --
14 why would they want to fix it? If there's nothing
15 broke, why do you want to fix something, if it
16 ain't broke?

17 We're operating and we're doing what we're
18 supposed to be doing, then, why do you want to
19 change it? Why do you want to get involved? Why
20 aren't they staying straight across, like I said,
21 like the State. Do they regulate -- do the Feds

22 have regulations on the State on their gaming? You
23 know, but, I guess, that's -- and I think, outside
24 of us providing jobs and health benefits and
25 helping our tribe grow, too, because our tribe is

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1 growing.

2 You know, looking at some of the cuts that
3 we're facing in the 2007 budget, some of the things
4 like -- I don't know if you guys are aware or not
5 that we got burial assistance, which means that
6 assist our tribal members, you know, as far as
7 getting buried. Well, that's cut. That's zeroed
8 out. So how are you gonna accommodate that now?
9 We have to look for other means to provide that
10 service to our people. That's one of the things
11 we're looking at as far as our gaming.

12 But more regulations, more regulations, you
13 know, it's almost tough to do anything or to
14 develop anything when you have more regulations put
15 on. That's about all I have to say. Thank you.

16 COMMISSIONER HOGAN: Thank you.

17 MR. TRAVIS CARRICO: I would like to add
18 to what Chairman Crawford said and ask the
19 question, you know, why? Why is it necessary to
20 redefine Class II?

21 COMMISSIONER HOGAN: Well, let me preface

22 my answer by saying, I'm a Ronald Reagan
23 Republican. I served as President Reagan's United
24 States Attorney in South Dakota for eight years.
25 One of the colorful events that occurred, while I

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1 was a U.S. Attorney, was Chairman Russ Hawkins and
2 delegation came into my office and said, what would
3 you do if we started playing Blackjack up here on
4 our site, and, you know, the rest is history.

5 There was a lot of significant changes after
6 that discussion, one of which was the enactment of
7 the Indian Gaming Regulatory Act, and the
8 legalization of Blackjack in Deadwood, and so
9 forth. So I have followed, quite closely, the very
10 proud history of the gaming success at Sisseton.

11 We fought a battle over whether Keno was bingo,
12 and so forth, but, I agree with the Ronald Reagan
13 philosophy that, maybe, less government is better.
14 And I think another Republican president, Abraham
15 Lincoln, said, that which governs least, governs
16 best, but I've been assigned a task here to try and
17 fulfill the role of the National Indian Gaming
18 Commission under the mandates of the Indian Gaming
19 Regulatory Act.

20 One of the things it tasks the NIGC with doing
21 is writing some federal standards. The Indian

22 Gaming Regulatory Act says you can conduct Class II
23 gaming, which could include bingo and pull-tabs and
24 so forth, with technologic aids. It also says if
25 the gaming is an electronic facsimile of a game of

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1 chance or a slot machine of any kind, it's Class

2 III. You have to have the compact.

3 And so, the challenge is, where do you draw

4 that line? What separates Class II from Class III?

5 How can a tribe who's, you know, in a fix like,

6 say, Sisseton can't get the State of South Dakota

7 to go beyond 250 machines, and you want to turn to

8 Class II. You want to invest, maybe, millions of

9 dollars in equipment. You better know, for darn

10 sure, that you know what you're gonna put your

11 money in is gonna work. It's gonna be legal.

12 And without that clarity, there will continue

13 to be this mystery, or this cloud of uncertainty,

14 hanging over those Class II activities. The

15 Department of Justice brought some lawsuits

16 challenging what they thought were violations of

17 the Johnson Act that some courts have said, well,

18 no, if they do it that way, it's Class II activity.

19 And, you know, that's the foundation we're

20 trying to build on. If you haven't had an

21 opportunity to read the preamble that we wrote to

22 these classification regulations, I strongly
23 commend that to you. We tried to say in crystal
24 clear language, and, maybe, we haven't achieved it,
25 just why we think this is necessary, and how we're

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1 trying to build on what was the intent of the
2 Indian Gaming Regulatory Act, which included, if
3 there would be a recognizable difference between
4 Class II activity, even when aided by technologic
5 aids and Class III. And the court cases that have
6 since been decided to try and draw that line, or
7 make interpretations.

8 So we, the federal regulators, ought to be
9 among those who know, this is the difference
10 between Class II and Class III. Right now, we
11 really can't easily tell that difference. If and
12 when we have a set of clear regulations, hopefully,
13 a set of regulations that will be fair and will
14 permit profitable, fun games that tribes can play
15 as Class II, then, I think, we'll all be better
16 served.

17 And the nightmare that I have is, one day, if
18 some clarity doesn't come to this, you may not be
19 able to tell the difference between Class II and
20 Class III, and then Congress is gonna come along
21 and say, boy, that's not what we intended at all.

22 And, maybe, this economic miracle that Indian
23 gaming has been, will come to an end, and I don't
24 want that to happen.

25 So those are among the reasons of what we're

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1 trying to accomplish there.

2 MR. TRAVIS CARRICO: Well, I have trouble
3 seeing what the problem is. It's a Class II, and
4 the court interprets it as Class II. It's Class
5 II, so why are we having trouble seeing what the
6 line is?

7 COMMISSIONER HOGAN: Well, the court said
8 that the Mega Mania machines were Class II. Mega
9 Mania was a bingo game. It was built on kind of a
10 bulky terminal. There were only pictures of bingo
11 cards on the video screen there. You had to have
12 12 people to play before you could start, and it
13 took about two or three minutes to play each game.

14 What we have today, on a number of floors where
15 they're doing reportedly Class II gaming, is a
16 device where you put your money in. You push the
17 button once, and the game is all over. And there's
18 night and day difference between what the court
19 said was okay and what technology has come to
20 today.

21 So we have found, as we've tried to write these

22 advisory opinions with respect to various
23 manufacturer's proposals, that technology moves so
24 fast that, unless or until we have this guideline,
25 this set of standards that will clearly set the

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1 criteria, it will always be a case by case
2 uncertain proposition that won't provide this
3 clarity that's needed when tribes have to make
4 those decisions, should we investment millions of
5 dollars in this equipment.

6 MR. DANNY WHITE: Just a couple of
7 questions. You talked a little bit about, you
8 said, profitable and fun games. Under the proposed
9 rules, they're not gonna be very profitable,
10 because they're not gonna been very fun, because
11 they're gonna be slow, very slow. If we're trying
12 to make a profitable and a fun game, I think, we
13 got that with the Class II games that are currently
14 being played in Florida and Oklahoma that I've
15 seen.

16 And of them games that are Class II, as of
17 today, are they gonna be, after these come out, is
18 there gonna be any grandfathering of those games?
19 Because up to this point, NIGC has said, those are
20 Class II games, but with these new rules, they're
21 not gonna be.

22 COMMISSIONER HOGAN: Under the current
23 proposal, there's no grandfather clause. What we
24 proposed, the way it would work is, if a tribe has
25 a device that it's playing and wants to keep

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1 playing, or if it brings in a new device that it
2 wants to put on its floor as Class II, it would
3 send that device off to a laboratory, like GLI or
4 BMM. They would test it against these standards,
5 and if it complies with the standards, they certify
6 it as Class II, and then, the tribal Gaming
7 Commission would approve that and approve it for
8 play.

9 NIGC, you know, would be able to evaluate that
10 decision. If we disagreed, we could object and so
11 forth, but that would mean that even existing games
12 played pursuant to an advisory opinion, would need
13 to go through that certification process.

14 There are games in Florida, there are games in
15 Oklahoma, that are being played as Class II that
16 don't comply with those advisory opinions. Those
17 advisory opinions, I think, in each instance,
18 require a series of daubing to cover the bingo card
19 after a series of balls drop or numbers are called.

20 And some of them are, maybe, many of them --
21 are now configured so that you just push the button

22 just once, and the machine, the game, does all the
23 rest. It doesn't provide for that player
24 participation, that opportunity to sleep the bingo
25 like you have in traditional paper bingo, and we

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1 think that's a vital component of the play of bingo
2 as Congress described it in the Indian Gaming
3 Regulatory Act.

4 So, you know, when you compare how long it took
5 to play a Mega Mania game, two or three minutes,
6 compared to how long you could play a game
7 permissible under our regulations, which probably
8 be less than ten seconds, that's a dramatic
9 difference. Mega Mania games were profitable. I
10 think games under these proposed regulations could
11 be profitable and, I believe, very profitable.

12 If you had a Class III machine sitting right
13 beside a Class II machine, you probably would find
14 more play on a Class III machine, because it would
15 be a permissible, one-touch play against the
16 machine, random number generator deal, whereas the
17 Class II would require, wait until there's another
18 player before you can start and participate to see
19 if you cover your card and win the bingo.

20 They could look a lot alike. There could be
21 slot machine reels that told the player whether

22 they won or lost the bingo game, but the actual
23 play, of course, would have to be a bingo
24 configuration. So I appreciate your concern, and
25 we don't want to not make them fun, not make them

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1 fast, not make them profitable, but we need to
2 accommodate that player participation element that
3 we think Congress intended when they described
4 bingo in Class II, as opposed to slot machines of
5 any kind.

6 COMMISSIONER CHONEY: I just got a couple
7 of comments. Your Class II operations, these
8 changes, you're taking it personal, because you
9 don't like it. It's slow. There are patrons that
10 won't like them. We're hearing that. We already
11 heard it in D.C. last week. We heard it yesterday.
12 We've heard it today, and we're gonna be hearing it
13 for the next three weeks while we're on the road.

14 But I want to caution you, each one of you,
15 there's a lot of critics in Congress who don't like
16 gaming. They don't believe in gaming. They want
17 to see gaming go away, and there have been a couple
18 of them that actually have made attempts to get
19 legislation passed to do away with gaming or put
20 more restrictions on gaming.

21 Senator McCain basically told us, gave us a

22 directive, and also told DOJ the same thing, to
23 clear this up. He said, "If you don't, I will".
24 We don't want to see this taken out of our hands.
25 We don't want to see it put in the hands of

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1 Congress, because they're gonna -- you know, Indian
2 gaming was enacted with a stroke of a pen. Now, at
3 the same token, it can be done away with the stroke
4 of a pen. We don't want to see that. We don't
5 want to see it taken out of our hands, taken out of
6 your hands. There could be some legislation coming
7 down, one of these days, that halt Class II gaming,
8 is now here done away with. Then, what are we
9 gonna do? What are you gonna do? You think you
10 got problems now? Wait 'til that happens. We
11 don't want to see that happen. I know you don't
12 want to see that happen.

13 We're trying our best to be, quote, user
14 friendly. We're trying to satisfy the tribes here,
15 and we're gonna hear a bunch when we go to
16 Oklahoma. We're gonna hearing an earful when we
17 get out in California, and so, be patient with us.

18 MR. DANNY WHITE: In regards to, Mr. Hogan
19 said, about the laboratories. Are there gonna be
20 some revisions to include the tribes in that
21 challenging of laboratory tests?

22 COMMISSIONER HOGAN: The way the
23 regulations are written right now, NIGC would be
24 the only party that could object to the report once
25 it comes forward from the lab. Thereafter, an

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1 appeal could be taken to the Commission if a tribe
2 disagreed, for example, with our decision, and that
3 would become final agency action, action that would
4 be subject to review by a U.S. District Court.

5 So the tribes would be, kind of, one step away
6 from challenging that. They would have to go
7 through the NIGC appeal first, but, I think, it
8 will accommodate an opportunity for a tribe to
9 challenge an NIGC ruling, or if NIGC disagreed with
10 the classification determination.

11 MR. GERMAN: No disrespect to any of the
12 attorneys in the room, but this feels a little bit
13 like it's a make work project for attorneys. I
14 mean, following this to its logical conclusion,
15 obviously, court cases are gonna be aplenty.

16 I don't know that -- I don't know that -- I
17 don't know that attorneys are underemployed today.
18 I really don't, but I tend to think that if the
19 rules as proposed go through, there will be work
20 aplenty for attorneys. And one thing we've done in
21 the 130 years since the Dawes Act, is we got

22 attorneys, too.

23 You know, somebody, I think, it was an
24 insurance company, sue me. I've got a whole firm
25 of attorneys looking for things to do. You know,

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1 sue me, so I've got something for them to do. I
2 guess, that is true for us, and I think that's true
3 of Indian gaming, in Indian country as a whole.

4 You know, I think the Good Book makes a comment
5 about being as gentle as a dove and wily as a
6 serpent, and, I think, we've become as wily as a
7 serpent. And, unfortunately, as you become more
8 sophisticated, as you become more cognizant of who
9 you are and what you are, you become a little more
10 callous. And I think that's where Indian country
11 is in regard to additional regulations, is nothing
12 to lose. Might as well sue.

13 Because we've been -- we've been where we may
14 return to. You don't hurt the man who doesn't have
15 anything by taking it from him. I don't have
16 anything. I don't have nothing to lose. We had 85
17 percent unemployment. Mr. Chairman, your tribe has
18 85 percent unemployment. It doesn't kill us to go
19 back to 85 percent unemployment. We've been there.
20 We've pulled ourselves out of it. Nothing to lose.
21 Might as well sue.

22 COMMISSIONER HOGAN: I expect that before
23 the ink is dry on whatever set of regulations we
24 adopt, if we adopt some, a lawsuit will be filed
25 challenging our approach, were we arbitrary and

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1 capricious when we made that rule? That's not a
2 bad thing. That's a good thing. We need clarity
3 to come to this area, and the court will tell us if
4 we're wrong and tell us if we're right, I guess,
5 and then, we'll get on with it.

6 So I'm not trying to draft something that will
7 merely provide the employment for tribal attorneys,
8 but sometimes, that's part of the process, too.

9 MR. GERMAN: That's part of the record,
10 Mr. Chairman.

11 COMMISSIONER HOGAN: I understand.

12 MR. DANNY WHITE: What about the technical
13 standards?

14 COMMISSIONER HOGAN: Glad you brought that
15 up, and I should have mentioned that at the outset.
16 As you probably know as you follow this process, we
17 formed a Tribal Advisory Committee. We did five
18 drafts of the classification regulations and a
19 couple of drafts of a really comprehensive set of
20 technical regulations.

21 When we decided this spring, it's time to get

22 the show further on the road, and publish the regs,
23 the proposed regs that we did, we decided that the
24 technical standards had gotten a little stale.
25 There were some technologic developments out there

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1 that needed to be updated. So we expect by the end
2 of this month to publish technical regulations as
3 well

4 MR. DANNY WHITE: So are you gonna allow
5 the extension of the comment period, so we can
6 review the technical stuff?

7 COMMISSIONER HOGAN: We are considering
8 that. We want to get a fair hearing, so to speak,
9 with both sets of regs, if that's possible. We
10 haven't finalized that decision.

11 MR. DANNY WHITE: Are you gonna work for
12 that, John, to get that?

13 MR. PETERSON: I know nothing (laughter).

14 MR. VALANDRA: But the plan, at the
15 present time, is to issue the technical regs in
16 time, so the that the deadline for the comments
17 would end at the same time, August 23, but as the
18 Chairman said, we're considering, based upon
19 comment, that may not be enough time. We don't
20 know that just yet.

21 MR. DANNY WHITE: Just for consideration,

22 we'd like to take -- have time to look them over
23 and get, you know, a solid comment. Obviously,
24 this is gonna be -- these written comments are
25 gonna be very important in regards to this, you

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1 know, so --

2 COMMISSIONER CHONEY: If you'd read those
3 technical regs, if you had some serious thoughts on
4 them, feel free to write it up, and send it to us.

5 We will take that into consideration. Who knows?

6 We might be going in the wrong direction.

7 MR. TRAVIS CARRICO: There's no doubt
8 taking bingo -- you guys are trying to preserve the
9 game of bingo the way it was 20 years ago. I mean,
10 it's like the black and white television. You guys
11 are saying, Congress only intended for the tribe to
12 have a black and white television. They didn't
13 intend for it to advance to be colored and flat
14 screen, and bingo has evolved into a very exciting
15 game, what we see today.

16 COMMISSIONER CHONEY: Yes, Class III.

17 MR. TRAVIS CARRICO: No. It's a bingo
18 game.

19 COMMISSIONER CHONEY: You can go to
20 Oklahoma and go to Florida and show me some Class
21 II games I'll be glad to go over.

22 MS. COLEMAN: Could I ask --

23 MR. TRAVIS CARRICO: It's a fast speed

24 bingo game is what we've got.

25 MS. COLEMAN: Could I ask a couple of

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1 questions about what you do have? Do you have
2 Class II?

3 MR. TRAVIS CARRICO: Yes, we do.

4 MS. COLEMAN: Do you have -- what kind of
5 games do you have?

6 MR. TRAVIS CARRICO: Manufacturers' or
7 game themes or --

8 MS. COLEMAN: The manufacturers'. Who are
9 the --

10 MR. TRAVIS CARRICO: Well, all the games
11 are bingo games. Some of the visual aid themes
12 include, you know, the fruit themes and stuff like
13 that. The manufacturers are Nova, which you know,
14 they presented their letter of opinion from NIGC.
15 And we've just started talking with Cadillac Jack,
16 and we'll be putting those on the floor as well.

17 MS. COLEMAN: So you primarily have Nova
18 right now?

19 MR. TRAVIS CARRICO: Right.

20 MS. COLEMAN: Is that a three-touch game?

21 MR. TRAVIS CARRICO: I believe so. Yes.

22 MS. COLEMAN: Do you have it in the same

23 facility as Class III machines?

24 MR. TRAVIS CARRICO: Yes.

25 MS. COLEMAN: So how is that working

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1 having a three-touch machine next to a slot
2 machine?

3 MR. TRAVIS CARRICO: Not nearly as well.

4 MS. COLEMAN: Not nearly as well. What
5 happens is that they get -- the bingo machines get
6 overrun? Or do you have clients who just really
7 like bingo? Or what happens?

8 MR. TRAVIS CARRICO: Overflow.

9 MS. COLEMAN: Overflow mostly. Do they
10 have to be trained on how to learn how to play the
11 game or --

12 MR. TRAVIS CARRICO: Yeah. It doesn't
13 play like a slot machine so --

14 MR. DANNY WHITE: It's better than it was
15 right away. They sat down and expected it to be a
16 self-explanatory slot machine, and some of them,
17 the older people, get a little frustrated, but
18 they're figuring it out, and it's becoming more --
19 they like them.

20 MR. GERMAN: Our performance has come up
21 considerably from, Travis, when was it? Was it in

22 April when they put them on the floor?

23 MR. TRAVIS CARRICO: Yeah. But they don't

24 even perform at half the level. If it was a slot

25 machine, it would perform like one. Players would

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1 play it. People vote with their dollars.

2 MS. COLEMAN: So they prefer the slot
3 machine, but performance has gone up as people have
4 learned how to play them?

5 MR. TRAVIS CARRICO: Yep. So you got more
6 die hard bingo people that --

7 MR. GROSS: But they earn less than half,
8 did you say, on what a slot machine would earn?

9 MR. GERMAN: Currently, on our floor. As
10 I said, the last time we were down here, John's
11 facility, pretty proud of 200 Class III devices,
12 running at better than \$200 a day, one unit, per
13 day. And at Dakota Connections, you'd raised
14 questions about, where we have Class IIs, and
15 they're running at about, well, a little better
16 than half, because we're running, I think, what's
17 our win, per unit, per day, at the Dakota
18 Connection?

19 MR. VALANDRA: This on the record so just
20 in case you don't want this to be public
21 information.

22 MR. GERMAN: I think, we're proud of our
23 success -- I appreciate that, but I think we're
24 proud of our success that we're better than \$200
25 win, per unit, per day, at Dakota Sioux. And on

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1 the floor, we started out at about \$25 win, per
2 unit, per day, with the Class II, and we've
3 incrementally brought that up to about 100, if I'm
4 not mistaken, Travis?

5 MR. TRAVIS CARRICO: (Indicating.)

6 MS. COLEMAN: Would you like to say that
7 out loud? No?

8 MR. TRAVIS CARRICO: The Vice Chairman
9 can.

10 MR. GERMAN: But again, as we do our job,
11 as management does its job in regard to player
12 education, customer education, and as
13 sophistication increases, our play has gone up, but
14 clearly the distinction between Class II and Class
15 III as our CEO has pointed out --

16 MR. TRAVIS CARRICO: The players know the
17 difference.

18 MR. GERMAN: Yes. There's a clear
19 distinction for us. I mean, there is a clear
20 distinction. Whether or not it's briefable to the
21 NIGC, or its staff, there is a clear distinction

22 for us in regards to side by side comparisons

23 between Class II and Class III.

24 MS. COLEMAN: Well, you're playing a Nova

25 game that is consistent with our advisory opinion?

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1 MR. TRAVIS CARRICO: Yeah. That was the
2 letter they brought in, and they presented to our
3 Tribal Gaming Commission before they went on the
4 floor so --

5 MR. DANNY WHITE: You know, that's gonna
6 be a, yes.

7 COMMISSIONER HOGAN: Well, what we are
8 trying to do, rather than say, you know, no, you
9 can't do that anymore, we're trying to say, okay,
10 this is the model, and these are the rules that say
11 it's the model. I don't know if when we finalize
12 our proposed rule, the Nova game will require any
13 changes. It may require an extension of the time
14 between the daubs or something like that. Maybe
15 not. We don't know what it'll say in final form.

16 We think it's important that we get set -- get
17 set, once and for all, what that distinction is.
18 Then, we can get on with it, and right now, we lack
19 that. We have these advisory opinions that are not
20 particularly effective tools to accommodate growth,
21 modernization, change, and don't have the imprint

22 of final NIGC action, so we don't have that final
23 protection, so to speak.

24 I hope we're -- at the end of the day trying to
25 go to the same place, you know, how Class II games

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1 work. You know their limitations. We just want to
2 put in black and white, okay, that's the way it's
3 done. Right now, we lack that. And if and when we
4 get these regulations done, hopefully, we'll have
5 it, and it will accommodate the game that you need
6 that will do what that place in your market
7 requires.

8 MR. VERLYN BEARDREAU: I guess, I'm just
9 curious, let's say, the Nova games you're talking
10 about, if you guys issued an advisory opinion now
11 that says they're okay to play, why would they not
12 be okay to play in six months from now?

13 COMMISSIONER HOGAN: Well, let's say the
14 regulations we adopt say, you have to wait two
15 seconds before you daub the second time. And when
16 we wrote that Nova opinion, it didn't dawn on us
17 that was, you know, a subject we should have
18 addressed.

19 Maybe, it occurred to us the next day when a
20 new vendor came in and brought that to our
21 attention. So that's the problem. We were kind of

22 doing it by the seat of our pants or making it up
23 as we went along. We really didn't have that
24 guideline to go by. We just want to put that in
25 place.

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1 MR. JON RUNDELL: I have one question:
2 What is it that Senator McCain needs clearing up
3 exactly?

4 COMMISSIONER CHONEY: A clear distinction
5 between -- between Class II and Class III. We
6 thought we had that a year ago. We were about
7 ready to go to the Federal Register to close this
8 out. Here comes the Justice Department that says,
9 no, you can't do that, 'cause if you do, it's a
10 violation of the Johnson Act. So we spent all of
11 the last six months of 2005 going back and forth
12 with the Justice Department on that.

13 It got to the point where we both were at an
14 impasse. We wouldn't compromise. They wouldn't
15 compromise. We went back and forth. Some of the
16 meetings were pretty contentious. It got -- got to
17 the attention of Senator McCain. He said, do
18 something about that. Make those corrections.
19 Make those compromises. "If you don't, I will."
20 He said that at a Senate hearing, so it's a matter
21 of public record.

22 MR. JON RUNDELL: We kind of heard that
23 from the governor of South Dakota, too, that he's
24 afraid to expand Indian gaming, because he's afraid
25 it might have to go away, too, and -- but video

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1 lottery, and that, but they continue to grow.

2 We're not allowed to.

3 MR. GERMAN: I think that, obviously, that
4 does beg a question that we had asked rhetorically
5 outside as we were getting ready to come in, and, I
6 think that the counsel from the agency had alluded
7 to it, just a little, in regard to the
8 proliferation of convenient gaming in this country.
9 And, apparently, while big brother, big government
10 tends to think that Indian gaming needs more
11 regulation.

12 The most detrimental form of gaming as is
13 evidenced in the National Gambling Study reflected
14 is convenience gambling. Who's looking out for the
15 interests of John Q. Public, when I have to look at
16 people who lost their rent payment. Lost the car
17 payment. Not at an Indian gaming casino, not at
18 Deadwood, but at the convenience gaming that's
19 right down the street on his block. Where's the
20 hue and cry?

21 But by golly, those doggone dirty Indians are

22 doing it again. They're making lemonade out of the
23 lemons we gave them. Doggone it. They found the
24 silver in those clouds. We need to put them in
25 their place, put them back in their place. Never

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1 mind the most detrimental form of gaming, that
2 which impacts the lowest socioeconomic strata in
3 this country day in, day out.

4 COMMISSIONER HOGAN: Well, if you think
5 Chuck Choney and I are here to put our foot on the
6 throat of our fellow tribesmen to diminish the
7 economic opportunity, I don't think you've looked
8 very seriously at how we've approached this. And I
9 appreciate your strong rhetoric, but when I hear
10 you challenging our integrity and our respect for
11 the noble efforts that tribes have made in the face
12 of great adversity, when we're just trying to bring
13 some clarity to this industry, to protect it, I've
14 got to express some concern.

15 MR. GERMAN: I didn't mean to impugn your
16 integrity or Mr. Choney's. I think that Congress
17 may be misguided. Certainly, Senator McCain,
18 specifically, may be misguided if he thinks that
19 this needs to be put back in a box, in a box.
20 Maybe, not back in the original box of 1988, Indian
21 Gaming Regulatory Act, but a box. And, I guess,

22 that's my concern. That's my contention is --

23 COMMISSIONER CHONEY: Do you remember 1999

24 and 2000, when MICS were brought into play? Of

25 course, I wasn't on the Commission at that time,

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1 but I've read the comments when I'm reading on the
2 MICS standards. There is all kinds of comments in
3 there, and I've read a lot of information that is
4 the end of Indian gaming. We're finished. We're
5 through. It's all said and done. If they bring
6 these MICS standards in, we're through.

7 All kinds of opposition throughout the entire
8 industry to not only from the manufacturers, the
9 vendors, and the individual tribes, they said if we
10 incorporate these MICS standards, that's the end of
11 Indian gaming. Look at where we are now?
12 \$23 billion a year, and MICS didn't have any
13 adverse effect. And we sincerely feel this will
14 not have an adverse effect on the Indian gaming.
15 It might slow it down, initially, but the tribes
16 will rebound, and they will recoup.

17 It's not gonna be the end. I think it's gonna
18 be better, much better.

19 MR. DANNY WHITE: My only concern, and I'm
20 a realist, there aren't no stopping these rules.
21 They're coming. But what I'm concerned with is,

22 how am I gonna make Dakota Sioux grow as a tribal
23 member, as a gaming commission member, because
24 we're not gonna get anymore than 250 in South
25 Dakota, maybe not in my lifetime. Maybe, in my

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1 son's lifetime, but not now, not for awhile. But
2 we can make it grow with Class II.

3 And I just want to make sure that we're able to
4 do that and make it fun and profitable as you said,
5 because that's gonna be what we're gonna use to
6 grow down there. We got it growing. We got the
7 hotel going, the expansion, and we're gonna need
8 some fun Class II games, and that's my concern.
9 And I know these are coming. I just want to make
10 sure that I'm able to speak my piece, that my
11 concern is, that we don't hinder them to a point to
12 where they're not fun or profitable for us.

13 COMMISSIONER CHONEY: Well, the industry,
14 the technology, has grown so fast, and the
15 technicians that these manufacturers, higher --
16 these machines, they're computer -- they're hiring
17 these computer whizzes. Like I said, when these
18 regulations are changed, when they're enacted, it's
19 gonna slow it down a little bit, but the technology
20 will soon catch up, and pass it up, and you're
21 gonna have your fun and fast games again.

22 MR. DANNY WHITE: That's all I'm worried

23 about.

24 COMMISSIONER CHONEY: I foresee that.

25 MR. DANNY WHITE: I have nothing. Anybody

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1 else?

2 COMMISSIONER HOGAN: Well, thank you for
3 the message you brought to us. We promise we will
4 sincerely consider what you've said, and we will
5 consider anything additionally you might want to
6 send to us by way of written comments, both with
7 respect to this package and the technical standards
8 that we expect to send out soon. So thank you for
9 coming to Minneapolis.

10 (Whereupon, the proceedings concluded at
11 approximately 2:34 p.m.)

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1 STATE OF MINNESOTA)
) SS
2 COUNTY OF WASHINGTON)

3 Be it known that I took the verbatim record of
the National Indian Gaming Commission's
4 Consultation Meetings regarding Classification
Standards Regulation on July 17, 2006, at The
5 Sheraton Hotel, 7800 Normandale Boulevard,
Bloomington, Minnesota 55439;

6 That I was then and there a notary public in
and for the County of Washington, State of
7 Minnesota, and that by virtue thereof I was duly
authorized to administer an oath but did not;

8 That the conversations of said participants was
recorded in stenotype by myself and transcribed
9 into typewriting, and that the Consultation
Meetings is a true record of conversations given by
10 the participants to the best of my ability;

That I am not related to any of the parties
11 hereto nor interested in the outcome of the action;

That I am not financially interested in the
12 action and have no contract with the parties,
attorneys, or persons with an interest in the
13 action that affects or has a substantial tendency
to affect my impartiality;

14 That all parties who ordered copies have been
charged at the same rate for such copies;

15

16 WITNESS MY HAND AND SEAL THIS 24th day of July,
2006.

17

18

19

Sherry G. Auge
Court Reporter

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24

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